

§ 1.852-12

26 CFR Ch. I (4-1-03 Edition)

mailed to its shareholders within 60 days after the close of the taxable year in which the distribution was paid (or treated as paid under section 852(b)(7)).

(k) *Effective date.* the provisions of this section shall apply to taxable years ending after October 31, 1987.

[T.D. 8287, 55 FR 3213, Jan. 31, 1990; 55 FR 7891, Mar. 6, 1990; 55 FR 11110, Mar. 26, 1990. Redesignated and amended by T.D. 8320, 55 FR 50176, Dec. 5, 1990; 56 FR 2808, Jan. 24, 1991; 56 FR 8130, Feb. 27, 1991]

§ 1.852-12 Non-RIC earnings and profits.

(a) *Applicability of section 852(a)(2)(A)*—(1) *In general.* An investment company does not satisfy section 852(a)(2)(A) unless—

(i) Part I of subchapter M applied to the company for all its taxable years ending on or after November 8, 1983; and

(ii) For each corporation to whose earnings and profits the investment company succeeded by the operation of section 381, part I of subchapter M applied for all the corporation's taxable years ending on or after November 8, 1983.

(2) *Special rule.* See section 1071(a)(5)(D) of the Tax Reform Act of 1984, Public Law 98-369 (98 Stat. 1051), for a special rule which treats part I of subchapter M as having applied to an investment company's first taxable year ending after November 8, 1983.

(b) *Applicability of section 852(a)(2)(B)*—(1) *In general.* An investment company does not satisfy section 852(a)(2)(B) unless, as of the close of the taxable year, it has no earnings and profits other than earnings and profits that—

(i) Were earned by a corporation in a year for which part I of subchapter M applied to the corporation and, at all times thereafter, were the earnings and profits of a corporation to which part I of subchapter M applied;

(ii) By the operation of section 381 pursuant to a transaction that occurred before December 22, 1992, became the earnings and profits of a corporation to which part I of subchapter M applied and, at all times thereafter, were the earnings and profits of a corporation to which part I of subchapter M applied;

(iii) Were accumulated in a taxable year ending before January 1, 1984, by a corporation to which part I of subchapter M applied for any taxable year ending before November 8, 1983; or

(iv) Were accumulated in the first taxable year of an investment company that began business in 1983 and that was not a successor corporation.

(2) *Prior law.* For purposes of paragraph (b) of this section, a reference to part I of subchapter M includes a reference to the corresponding provisions of prior law.

(c) *Effective date.* This regulation is effective for taxable years ending on or after December 22, 1992.

(d) For treatment of net built-in gain assets of a C corporation that become assets of a RIC, see § 1.337(d)-5T.

[T.D. 8483, 58 FR 43798, Aug. 18, 1993; 58 FR 49352, Sept. 22, 1993; T.D. 8872, 65 FR 5777, Feb. 7, 2000]

§ 1.853-1 Foreign tax credit allowed to shareholders.

(a) *In general.* Under section 853, a regulated investment company, meeting the requirements set forth in section 853(a) and paragraph (b) of this section, may make an election with respect to the income, war-profits, and excess profits taxes described in section 901(b)(1) which it pays to foreign countries or possessions of the United States during the taxable year, including such taxes as are deemed paid by it under the provisions of any income tax convention to which the United States is a party. If an election is made, the shareholders of the regulated investment company shall apply their proportionate share of such foreign taxes paid, or deemed to have been paid by it pursuant to any income tax convention, as either a credit (under section 901) or as a deduction (under section 164(a)) as provided by section 853(b)(2) and paragraph (b) of § 1.853-2. The election is not applicable with respect to taxes deemed to have been paid under section 902 (relating to the credit allowed to corporate stockholders of a foreign corporation for taxes paid by such foreign corporation).

(b) *Requirements.* To qualify for the election provided in section 853(a), a regulated investment company (1) must have more than 50 percent of the

value of its total assets, at the close of the taxable year for which the election is made, invested in stocks and securities of foreign corporations, and (2) must also, for that year, comply with the requirements prescribed in section 852(a) and paragraph (a) of § 1.852-1. The term "value", for purposes of the first requirement, is defined in section 851(c)(4). For the definition of foreign corporation, see section 7701(a).

§ 1.853-2 Effect of election.

(a) *Regulated investment company.* A regulated investment company making a valid election with respect to a taxable year under the provisions of section 853(a) is, for such year, denied both the deduction for foreign taxes provided by section 164(a) and the credit for foreign taxes provided by section 901 with respect to all income, war-profits, and excess profits taxes (described in section 901(b)(1)) which it has paid to any foreign country or possession of the United States. See section 853(b)(1)(A). However, under section 853(b)(1)(B), the regulated investment company is permitted to add the amount of such foreign taxes paid to its dividends paid deduction for that taxable year. See paragraph (a) of § 1.852-1.

(b) *Shareholder.* Under section 853(b)(2), a shareholder of an investment company, which has made the election under section 853, is, in effect, placed in the same position as a person directly owning stock in foreign corporations, in that he must include in his gross income (in addition to taxable dividends actually received) his proportionate share of such foreign taxes paid and must treat such amount as foreign taxes paid by him for the purposes of the deduction under section 164(a) and the credit under section 901. For such purposes he must treat as gross income from a foreign country or possession of the United States (1) his proportionate share of the taxes paid by the regulated investment company to such foreign country or possession and (2) the portion of any dividend paid by the investment company which represents income derived from such sources.

(c) *Dividends paid after the close of the taxable year.* For additional rules applicable to certain distributions made

after the close of the taxable year which may be designated as income received from sources within and taxes paid to foreign countries or possessions of the United States, see section 855(d) and paragraph (f) of § 1.855-1.

(d) *Example.* This section may be illustrated as follows:

(1) The X Corporation, a regulated investment company, has total assets, at the close of the taxable year, of \$10 million invested as follows:

| | | |
|-----------------------------|-------------|------------|
| Domestic corporations | \$4,000,000 | |
| Foreign corporations in: | | |
| Country A | \$3,500,000 | |
| Country B | 2,500,000 | |
| | | 6,000,000 |
| Total assets | | 10,000,000 |

(2) The dividend income of X Corporation is received from the following sources:

| | | |
|---|-----------|-----------|
| Domestic corporations | \$300,000 | |
| Foreign corporations: | | |
| Country A | \$250,000 | |
| Country B | 250,000 | |
| | | 500,000 |
| Total dividend income | | 800,000 |
| Operation and management expenses | | 80,000 |
| Net dividend income | | 720,000 |
| Taxes withheld by Country B on dividends of \$250,000 at a rate of 10 percent | 25,000 | |
| Taxes withheld by Country B on dividends of \$250,000 at a rate of 20 percent | 50,000 | |
| Total foreign taxes withheld | | 75,000 |
| Income available for distribution | | \$645,000 |

(3) X Corporation has 250,000 shares of common stock outstanding and distributes the entire \$645,000 as a dividend of \$2.58 per share of stock.

(4) The X Corporation meets the 50 percent requirement of section 851(b)(4) and the requirements of section 852(a). It notifies each shareholder by mail, within the time prescribed by section 853(c), that by reason of the election they are to treat as foreign taxes paid \$0.30 per share of stock (\$75,000 of foreign taxes paid, divided by the 250,000 shares of stock outstanding), of which \$0.20 represents taxes paid to Country B and \$0.10 taxes paid to Country A. The shareholders must report as income \$2.88 per share (\$2.58 of dividends actually received plus the \$0.30 representing foreign taxes paid). Of the \$2.88 per share, \$1.80 per share (\$450,000